THE HON'BLE SRI JUSTICE V.ESWARAIAH

Writ Petition No.1394 of 2006

27.01.2006

Between:

B.Kiran Shri

... PETITONER

AND

The Deputy Registrar of Cooperative Societies, R.R.Street, Nellore and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.ESWARAIAH

Writ Petition No.1394 of 2006

ORDER:

The petitioner seeks a writ of Mandamus declaring the action of the fifth respondent-Cooperative Tribunal at Vijayawada in not taking up Appeal (SR) No.1669 of 2005 together with stay application filed by the petitioner pursuant to the order of this Court as illegal and arbitrary and consequently, to direct the fifth respondent to forthwith pass orders on the stay application.

It is stated that a notice was issued by the first respondent under Section 73 of A.P. Cooperative Societies Act, 1964 (for short 'the Act') calling upon the petitioner to furnish security for a sum of Rs.4,26,055/- towards the liability against the order that may be passed, failing which, show cause as to why the immovable properties of the petitioner should not be attached conditionally. As against the said order, the petitioner filed W.P.No.17400 of 2004, which was disposed of by this Court by an order, dated 29.09.2004, observing that the petitioner got an alternative remedy and the petitioner was given liberty to work out appropriate remedy available to him. It is stated that as against the said order, writ appeal had also

been filed and the same was dismissed by this Court. It is stated that thereafter, the petitioner filed an appeal along with a stay application before the fifth respondent-Tribunal in the year 2004 which was numbered as Appeal No.154 of 2005. However, the Tribunal neither disposed of the stay application nor the main appeal.

It is further stated that when the appeal itself is pending against the earlier order, dated 07.09.2004, the first respondent has issued another proceedings in R.C.No.1127/2001-B, dated 22.08.2005, stating that an enquiry has been conducted by the Sub-Divisional Cooperative Officer, Nellore under Section 51 of the Act and submitted a report stating that the petitioner misappropriated a sum of Rs.9,52,171.70 ps and accordingly, the petitioner was called upon to submit a written explanation with material evidence, if any, in support of his case before 05.09.2005 and also to attend for personal enquiry on 05.09.2005. It is stated that the petitioner submitted his explanation on 20.01.2006 and that pursuant to the said proceedings, the respondents are taking coercive steps to realise the said amount. The petitioner submits that having issued earlier proceedings, dated 07.09.2004, fixing tentative liability for a sum of Rs.4,26,055/-, the demand of Rs.9,52,171.70 ps is illegal and arbitrary. I am not inclined to express any opinion as the earlier proceedings, dated 07.09.2004, is only an interim order calling upon the petitioner to furnish security as against the liability that may be determined. It is stated that after conducting enquiry, tentative liability has been determined. Therefore, the petitioner was called upon to submit his explanation to the same. Therefore, I am not inclined to stall any further proceedings pursuant to the proceedings issued by the first respondent in R.C.No.1127/2001-B, dated 22.08.2005. Insofar as the prayer in this writ petition is concerned, as the appeal has been numbered, the fifth respondent may consider and dispose of the same. In these circumstances, I am of the opinion that even if the stay is granted, the petitioner has to furnish security for the amount as determined tentatively in the first instance, but not for the amount pursuant to the proceedings, dated 22.08.2005.

However, having regard to the facts and circumstances of the case, the fifth respondent-Tribunal is directed to consider and dispose of the appeal itself as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No costs.

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27.01.2006

VGB